

**CITY OF BEVERLY
PUBLIC MEETING MINUTES**

BOARD OR COMMISSION: Beverly Conservation Commission
DATE: May 13, 2021
Special Meeting for Waring School Encroachment
LOCATION: Virtual Meeting via Google Hangout Meets
MEMBERS PRESENT: Chair Christine Bertoni, Vice Chair Robert Buchsbaum, Stephanie Herbster, William Squibb, David Alden-St. Pierre, Richard Grandoni
MEMBERS ABSENT:
OTHERS PRESENT: Environmental Planner Jenna Pirrotta, Mayor Michael Cahill, City Solicitor Stephanie Williams, Assistant City Solicitor Kevin Corridan, Planning Director Darlene Wynne, Associate Planner Chelsea Zakas
RECORDER: Stacia Chamberlain

1. Call to Order

Bertoni calls the meeting to order at 7:10 p.m. and reads the virtual meeting guidelines noting that the meeting is being held in accordance with temporary Open Meeting Law adjustments due to the State of Emergency associated with the COVID-19 outbreak.

2. Approval of Minutes

The Commission reviews the draft minutes from the April 11, 2019 meeting. Herbster moves to approve the April 11, 2019 minutes as written. Seconded by Buchsbaum. Bertoni takes a roll call vote. The motion carries 6-0.

3. Recess for Public Hearing

Herbster moves to recess the meeting for public hearings. Alden- St. Pierre seconds. Bertoni takes a roll call vote. The motion carries 6-0.

4. Reading of the Legal Notice

Pirrotta reads the legal notice, describing the purpose of the meeting to discuss the proposal for the exchange of real property with the Waring School and the City of Beverly to resolve the Waring School playing field encroachment on conservation land that is held in a Public Charitable Trust, the City being a trustee of the Trust.

5. Introduction/Presentation

Tom Harrington, attorney with Miyares and Harrington, representing the Waring School, presents the land-swap proposal, which was presented previously at the April 6, 2021 meeting. He presents an affidavit from Lawrence Coolidge, executor of the Edith Miles' estate, with a

presentation on the history of the transfer of conservation land abutting the school. Harrington provides history of the issue walking through the timeline. He explains that a portion of the original parcel was acquired by the City first and then a portion of the Miles property was acquired by the school. The encroachment was likely in place when the land was transferred, but only identified by the Conservation Commission in 1990. Harrington notes the encroachment was discussed sporadically over the next 20 years; in 2013, the school proposed an exchange of land licenses for continued use of the originally granted parcel. Negotiations were ongoing and in 2015 Waring School representatives felt they had an agreement with the City for next steps. In 2016, Harrington's office began working with the City to execute the land swap. In November 2018, a draft document was sent to the Conservation Commission. In April 2019, there was a Conservation Commission hearing regarding the land swap, with the Commission voting 6-1 in favor of the swap. Harrington notes that a unanimous consent was needed to move forward at that time.

Harrington presents alternatives to the location of the existing soccer field location and discusses the need for a soccer field in the existing dimensions and various program uses for the sports field. Waring School's investigation into alternative soccer field locations noted the presence of wetlands on the site and rocky terrain, making relocation a costly option. Harrington then presents the details of the land swap proposal. The area of Waring School encroachment is approximately .39 acres (parcel B2), which is City conservation land. The school proposes the construction of two public parking spaces plus approximately 1.1 acres of land (parcel 1D) which would contain an access trail and stream to other land held by the City of Beverly. Harrington states that there would need to be a unanimous vote of the Conservation Commission to move forward with the swap. He proposes that the City declare parcel B2 as surplus and endorse transfer to the school subject to receipt of the deed parcel 1D. Preparation and legal costs would be paid by the Waring School. Discussion ensues about access right-of-ways for the City land and established trails.

Grandoni asks why the field was originally constructed in situ. Harrington believes it was an oversight. Buchsbaum asks how much of the proposed land to be provided to the City would be considered buildable. Harrington replies that the state would want to see a 3-1 benefit for the swap, whether it's develop-able land or not. Bertoni asks whether the City Solicitor could answer Buchsbaum's question to the standards for the value of the land to be swapped. Assistant City Solicitor Kevin Corridan adds that the value of the land being swapped isn't so much a concern, rather, the issue is more about the acreage of the land, but he believes it is mostly wetlands. Grandoni adds that develop-ability is a moot point for the location and nature of the land. Pirrotta confirms that the land is wetlands based on the plan and appraisals of the parcels. Herbster asks about the aerial photos and whether the land was cleared at the time of historic aerial photos. Harrington notes the area subject to both parcels was all part of an existing field, perhaps used for horse riding, while the City-owned land has become more naturalized over the years. Mr. Coolidge remarks that the City land was indeed cleared by the time of the death of Mrs. Miles. Bertoni asks whether alternatives were presented yet to the Conservation Commission. Harrington states that Waring preferred to appeal to the Commission first.

Mayor Cahill asks for clarification about the size of the B2 and 1D parcels. Tim Bakland, Head of Waring School, describes that the school serves students in 6 to 12th grades; school sports is a

requirement and as such, the fields are necessary. Bertoni asks about student enrollment; Bakland replies that enrollment is 164 students for the 2021-2022 school year. Bertoni asks about other sports field locations. Bakland explains that to make the least environmental impact, the land swap is necessary. Bertoni asks if they would put parcel B2 in a conservation restriction. Grandoni asks if they have looked at wetlands jurisdiction of other alternative field placements; Harrington says that they have not done that assessment. Grandoni notes it appears there would be greater wetland impacts with alternative soccer field locations. Bertoni asks if there is an entity willing to hold the conservation restriction for the B2 parcel. Harrington replies that Essex County Greenbelt would be willing to hold it; he proposes that the City could if they were interested. Pirrotta inserts that Kate Bowditch, President of Essex County Greenbelt, provided a statement earlier that day noting Greenbelt would be willing to hold the Conservation Restriction and that they are in support of quickly resolving the land swap issue. Bertoni also asks whether it was considered to hold the remainder of the field in a conservation restriction.

Bertoni walks through key points in the timeline from the Commission's perspective and in particular refers to:

- 1) a January 19, 2016 letter from Stephanie Williams to the Commission, citing case law about the land swap to settle the encroachment issue;
- 2) the March 1, 2016 meeting minutes stating that the Waring School attorney proposed a land swap, Greenbelt was in support of the swap, and the Commission requested that the land swap proposal be put in writing;
- 3) a June 14, 2016 letter from Stephanie Williams to the Commission stating that the Solicitor's Office does not recommend filing a court action to change the terms of the trust; and
- 4) the July 13, 2016 minutes that reflect discussion about the Solicitor's June 14, 2016 letter and the Commission's motion to issue enforcement directives to vacate the encroachment issue.

Bertoni notes this was a resolution to the encroachment issue that was ongoing since the 1990's, but the encroachment was not vacated and then later:

- 1) on March 23, 2017, the Commission received a letter from the Solicitor's Office that they had reached out to the Attorney General's Office about circulating a petition to approve the swap;
- 2) on August 16, 2018, the Commission received a letter from the Solicitor's Office requesting to discuss the swap with the Commission;
- 3) the Commission held an executive session on December 6, 2018; and
- 4) on April 11, 2019, the meeting minutes reflect the Commission voted 6-1 in favor of the swap.

Corridan notes that the City's views have changed over the years and that having a unanimous vote on both land protection issues would help inform the City whether it was worthwhile to pursue the swap. Corridan confirms there are two land protection hurdles that would need to be overcome, as the land is held in a public charitable trust and is also protected under Article 97. In response to Bertoni's question, Corridan clarifies that the Article 97 disposition process would require a unanimous vote of the Commission, but the equitable deviation of the public charitable trust does not. Buchsbaum adds that the Commission did discuss going to the court regardless of Commission unanimity on the 2019 vote. Harrington offers that Waring could be a co-participant on the complaint in presenting to the court if the Commission would like to approach the court before voting on the equitable deviation of the public charitable trust. Corridan states that the court's position was to ascertain public sentiment with regards to this complaint.

Bertoni opens the hearing for public comment.

6. Open Discussion/Q&A

- a. Marilyn McCrory, resident, comments to the value of the parcels and asks Pirrotta to provide the appraised value of the land parcels. Pirrotta responds that the May 14, 2018 appraisal gives parcel B2 a value of \$15,000, and \$1,500 for parcel 1D. McCrory then clarifies that the swap is B2 to the school and 1D to the City. She is concerned that the City is abandoning its duty to protect conservation land and proposes that the school abandon the encroachment.
- b. Charlie Mann, resident, comments that the idea of land preservation is serious. He believes that Edith Miles expressed that this land should be for recreation and open space for the public good. He favors the land swap for expedience to resolve the issue, stating abandoning the encroachment is the simplest solution. He notes the length of time already given to the issue, citing that Waring has had use of the land in the meantime.
- c. Wayne Miller, resident, walked the property before the beginning of the meeting this evening and suggests that the land subject to the encroachment is relatively valueless; it's his opinion that the land to be swapped is more valuable and useful to the public than the land that the school is using as part of its playing field. He expresses his full support for the land swap and reads a prepared statement.
- d. Elizabeth Dunne, resident, recommends that Waring stop using the encroached segment of the field until the matter is resolved.
- e. Cindy Keegan, resident and Vice Chair of Waring board, adds that regarding the differences of appraised land value, a conservation restriction makes land value with regard to development is a moot point. She also comments that Waring continues to allow public access via their private property to City property surrounding the school. She notes that the school could change their stance on public access through Waring property going forward. Mann follows up on this comment noting that the existing bridge on the Waring School property is not the only area to access City trails and that another small crossing could be built entirely on City property.
- f. Laurence Coolidge, grandson of the original land donor, moves to speak. He seconds the remarks of Wayne Miller and elaborates on the practical temperament of Edith Miles, suggesting that she would find it to be a valuable land swap; that the land swap is beneficial to the City as well as the school in terms of what each would gain.
- g. Mayor Cahill thanks Mr. Coolidge for his interest and time in this matter and appreciates his perspective as a relative of Mrs. Miles, the original land donor. He expresses that the sports field is integral for Waring and that the field as it is currently located on the property would be unworkable in another configuration elsewhere on school property. He thanks the members of the Commission for their thoughtful consideration.

Squibb agrees the appraisal is irrelevant in the event that the parcels are placed in a conservation restriction and not considered buildable. He questions whether the issue goes to the court and the Article 97 disposition is approved and a determination is made on whether the public charitable trust could be altered, whether that would change the Commission's vote regarding approval of the swap. Squibb thinks that it should go to the court before the Commission votes.

Bertoni refers back to the legal approach, requesting clarification from Corridan. Harrington notes his suggested approach is to remove City land from Article 97 protection so that it can then be conveyed to the school. Harrington believes that the City wants a unanimous vote from the Commission on Article 97 disposition before proceeding with a determination on the equitable deviation of the trust. Squibb asks about the court review process. Harrington notes that this request isn't unusual; and could be straightforward if the donor and the City are in agreement with the swap. The Commission members convey willingness to proceed with a vote.

Harrington responds to Squibb's question about additional land that could be added to the swap. He describes that Waring owns the land across the street from the main campus and the school is trying to develop three lots there, through an Open Space and Residential Design (OSRD) approval. Waring would be willing to convey to the Commission an easement or separate parcel as part of the OSRD process. Darlene Wynne, City of Beverly Planning Director, clarifies that the Conservation Commission would also be in the discussion about holding said land in trust as a typical part of the OSRD process.

Bertoni asks the Commission their interest in proceeding with a motion to proceed with the swap. Corridan clarifies the options that the Commission could vote on. Grandoni moves to take a vote on Article 97 and there is no second. Harrington and Corridan clarify that there are separate issues to vote on. Corridan questioned whether the Commission approves of the removal of land swap parcel 1D from Article 97 protection, regardless of the court's decision on the trust. The court, under equitable deviation of the public charitable trust, can say that the land swap can be done, without a unanimous vote, but the Article 97 disposition is a separate process that requires unanimity. Bertoni feels that if the land swap will not happen without unanimity regarding Article 97, they should vote on that issue now, instead of delaying the process.

Buchsbaum moves to approve the land swap as proposed, should the court decide to approve the equitable deviation of the public charitable trust and to dispose of parcel 1D under the Article 97 disposition process to make it available for the land swap. Seconded by Squibb. Bertoni takes a roll call vote. The motion carries 5-1, with Bertoni voting no.

Harrington expresses his disappointment with the vote and states that Waring School will direct the public to immediately stop accessing City conservation land from Waring School property while the issue is being resolved; Corridan will discuss that issue with Harrington after the meeting.

7. Reconvene Regular Meeting

Squibb moves to reconvene the regular meeting. Grandoni seconds. Bertoni takes a roll call vote. The motion carries 6-0.

8. Adjournment

Squibb moves to adjourn the meeting at 8:56 pm. Herbster seconds. Bertoni takes a roll call vote. The motion carries 6-0.

Documents reviewed: Draft Probate Court Petition Concerning the Edith Miles Public Trust and Waring School and letter to the Conservation Commission from Kevin Corridan, Assistant City Solicitor, dated November 6, 2018; “Plan of Land in Beverly, MA” prepared by Hancock Associates, scale 1” = 60’, dated February 14, 2015; timeline of relevant dates prepared by Waring School and reviewed by City of Beverly; W. Miller comments for hearing 5-13-21; K. Bowditch comments 5-13-21 (email); PowerPoint presentation, prepared by Tom Harrington, dated April 6, 2021.